

September 27, 2006

EA-06-108

E. Lynn McGuire, Director
National Health Physics Program (115HP/NLR)
Department of Veterans Affairs
Veterans Health Administration
2200 Fort Roots Drive
Little Rock, AR 72114

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. McGuire:

This letter refers to the inspection conducted by the Department of Veterans Affairs (DVA) National Radiation Safety Committee (NRSC) on December 13-20, 2004, at the DVA Medical Center in Phoenix, Arizona. An apparent violation pertaining to the use and storage of radioactive material at a location that was not authorized by the DVA permit issued to the Phoenix facility was identified during the inspection.

The Master Materials License (MML) issued to the DVA by the U.S. Nuclear Regulatory Commission authorizes the NRSC to conduct inspections and take enforcement actions against its permittees. On January 11, 2005, the NRSC issued a Notice of Violation (Notice) to the Phoenix facility, for the use and storage of radioactive material, tritium labeled infusate, at a location that was not authorized by its NRSC permit. The violation would normally be categorized at Severity Level IV. However, the NRSC considered the violation to be more significant because of its repetitive nature and categorized the violation at Severity Level III.

In accordance with the NRC Enforcement Policy, the use and storage of tritium labeled infusate at a location that was not described on an NRC license would be categorized as a Severity Level IV violation. However, because the DVA: (1) identified the violation; (2) took appropriate corrective actions to address the violation and prevent future recurrence;¹ and (3) processed the violation in accordance with the enforcement requirements and procedures included in your MML, the NRC has decided to exercise enforcement discretion, as provided for in Section VII.B.6 of the Enforcement Policy, and not cite this violation (EA-06-108).

Therefore, to encourage prompt identification and comprehensive correction of violations, and in recognition of absence of previous escalated enforcement actions involving this facility, I have been authorized, after consultation with the Regional Administrator, Region III, and

¹ Corrective actions are described in a February 10, 2005, letter from the Medical Center Director at the Phoenix facility to the Director, Veterans Health Administration (VHA) National Health Physics Program.

Director, Office of Enforcement, not to issue a Notice of Violation for this matter. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

You are not required to respond to this letter. Should you choose to respond, please mark your response as a "Reply to an Exercise of Enforcement Discretion, EA-06-108," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer, Region III, within 30 days of the date of this letter.

Please contact Patricia J. Pelke, Chief, Materials Licensing Branch, at (630) 829-9868 with questions.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, should you choose to respond, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also include significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Steven A. Reynolds, Director
Division of Nuclear Materials Safety

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State of Arizona

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Letter to E. McGuire from Steven A. Reynolds dated September 27, 2006

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